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ABSTRACT

This paper investigates methods of copyright compliance by private law firm libraries. This is an important issue in light of recent lawsuits filed by publishers attempting to penalize those organizations that reproduce their materials without additional compensation. Two hundred and seventy-eight law firm libraries that are members of the American Association of Law Libraries (AALL) were surveyed to determine the extent to which copyright compliance is achieved and the methods that are being used to achieve compliance. Data from the 166 responses received (59% response rate) reveal that varying numbers of the respondents are utilizing the following methods to comply with the copyright laws: routing originals and tables of contents rather than full copies of newsletters, magazines, etc.; purchase of duplicate subscriptions; purchase of subscriptions for each library; posting copyright signs at all copy machines; contacting and paying royalties to copyright owners when necessary; and refusal to honor photocopying requests. (Only 13% are registered with the Copyright Clearance Center.) Another main emphasis of this study was to investigate how many law firms have written copyright policies and what these policies cover. The data revealed that, even though a majority of the firms do not have written policies, they are attempting to comply with the copyright laws. Copies of the survey questionnaire and the AALL Model Private Firm Copyright Guidelines (draft) are appended. (Contains 11 references.) (BBM)

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Copyright Compliance by Law Firm Libraries

A Master's Research Paper submitted to the
Kent State University School of Library and Information Science
in partial fulfillment of the requirements
for the degree Master of Library Science

by

Alicia Kehrig

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IR

ABSTRACT

This paper investigates methods of copyright compliance by private law firm libraries. This is an important issue in light of recent lawsuits filed by publishers attempting to penalize those organizations which reproduce their materials without additional compensation. Law firm libraries which are members of the American Association of Law Libraries (AALL) were surveyed. The data reported reveal which methods firms are utilizing to comply with the copyright laws. The main emphases of this study were to investigate how many law firms have written copyright policies and what these policies cover. The data revealed that even though a majority of the firms do not have written policies, firms are attempting to comply with the copyright laws.

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I. Introduction

Copyright laws have been an important issue for libraries since the advent of new technologies like photocopying machines and computers. Many articles have been written on the various aspects and the effects of the copyright laws on libraries since the revision of the Copyright Act of 1909. The Copyright Revision Act of 1976 became effective on January 1, 1978 and these laws are delineated in Title 17 of the United States Code.

Photocopying of library materials is a standard practice in all libraries. However, the act of photocopying can constitute a copyright infringement depending on the nature of the act. Sections 107 and 108 of the Code, which address this issue, have a direct impact on libraries. Section 107 sets forth the provisions of "fair use" which ultimately limit the exclusive right of copyright owners by allowing for the reproduction of a copyrighted work for such purposes as teaching, scholarship or research. Congress attempted to codify this doctrine by including the following factors in the text of the law to aid in the determination of fair use:

> In determining whether the use made of a particular case is fair use the factors to be considered include:
>
> > (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
> >
> > (2) the nature of the copyrighted work;
> >
> > (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
> >
> > (4) the effect of the use upon the potential market for or value of the copyrighted work.[1]

These principles apply to both single and multiple copies.

Section 108 discusses photocopying by libraries and archives and provides them exemptions from copyright infringement. A library may provide a patron with one copy of what is to be reproduced only if the following conditions are met:

> (1) the reproduction or distribution is made without any purpose of direct or indirect commercial advantage;

(2) the collections of the library or archives are (i) open to the public, or (ii) available not only to researchers affiliated with the library or archives or the institution of which it is a part, but also to other persons doing research in a specialized field; and

(3) the reproduction or distribution of the work includes a notice of copyright.2

When these requirements are satisfied, a library is generally exempt from copyright infringement.

Unfortunately, these laws and the act of copyright infringement is a very complicated issue with many "gray" and undefined areas. Although the laws do delineate the responsibilities of libraries, they do not differentiate among types of libraries. Recent copyright infringement lawsuits indicate that unlike public or academic libraries, many special libraries are not exempt from copyright compliance due to the for-profit nature of their parent organization. Many special librarians may not be aware of this distinction.

The concept of copyright infringement and copyright compliance is a very real and timely issue affecting special libraries. Based on recent lawsuits involving special libraries, there are grounds to believe that special libraries in general are not complying fully with the copyright laws. Copyright compliance for this paper is defined as the act of complying with those provisions set forth in Title 17, Section 107 of the United States Code. Specifically libraries are in compliance with the copyright laws when the following conditions are met:

(1) They do not make copies of whole or substantial portions of books, newsletters or journals;

(2) They display appropriate copyright notice near every photocopier;

(3) They stamp or write a notice of copyright on the front page of every photocopy supplied by the library;

(4) Register with the Copyright Clearance Center and pay fees associated with all photocopying.

Copyright infringement then, is the act of non-compliance with any or all of the above conditions.

The most recent case involved American Geophysical Union and Texaco. The court ruled that companies in the for-profit sector that make copies of copyrighted scientific and technical journals, violate the doctrine of fair use under the 1976 Copyright Act. Interestingly, the Special Libraries Association (SLA), the American Association of Law Libraries (AALL) and the Association of Research Libraries (ARL) have joined together to prepare an *amicus curiae* (Friends of the Court) brief in support of Texaco's appeal. SLA felt it was necessary to support Texaco based on its copyright policy which states:

> SLA supports the rights of both the creator and user. The Association maintains that libraries and information centers in the for-profit sector must be permitted the same privileges as those in the not-for-profit sector.[3]

However in 1991, as a direct response to a case filed by a newsletter publisher against a Washington, DC law firm, AALL took a dramatic stance on the issue of copying entire newsletters. In their resolution, AALL urged:

> that the 1976 Copyright Act be interpreted to mean that the regular, systematic and cover-to-cover reproduction of copyrighted newsletters without the permission of the copyright owners exceeds fair use.[4]

Although it is understandable that AALL does not condone the copying of entire copies of newsletters, their participation in the Texaco appeal raises questions concerning their actual stand on copyright compliance. These examples are given to further illustrate how complicated and unclear this issue is for the library community. If our professional associations can not provide cohesive leadership on this subject, how are librarians supposed to manage the situation in their own libraries?

Special librarians and the profession as a community need to investigate this issue of copyright compliance. They need to question if they are indeed complying with the laws both individually and as a group. Once these issues are known then perhaps the library community can take a united stand on this issue. Although only the legal system can ultimately define the extent to which special libraries are exempt from copyright infringement, and until this occurs, the library community needs to develop a unified policy. If anything, we need to resolve these issues

before more cases like Texaco develop. Before this can be achieved, the library community needs to know the current state of copyright compliance. This study hopes to provide this information.

II. Literature Review

Much has been written on the copyright law itself and its effect on certain aspects of library operations such as interlibrary loan. Little investigation has been done on the extent of actual copyright compliance by libraries, especially for special libraries that are not necessarily exempt from copyright infringement. Since photocopying is at the heart of the copyright infringement issue, it is understandable that several studies exist on this issue.

All of these studies were conducted in the late 1970's and can probably trace their roots to the pending enactment of the new Copyright Right Act of 1976. These studies were primarily interested in determining photocopying volume and the procedures involved with this library service.

SLA conducted one of the earliest studies of photocopying procedures in 1974 with the results being published in the 1976 article, "Survey of Photocopying Procedures in Special Libraries."[5] This survey concentrated on photocopying operations such as the number of copiers in the library, persons operating the copier, charges for photocopying and the number of pages copied each month from both serials and monographs. SLA had three hypotheses. First, many of the libraries would not have the data available with the primary reason being that the copier was not located in the library. Second, parent organization policy would not allow employees to answer questions concerning internal operations. Third, libraries are so saturated with surveys, this survey would probably end up in the wastebasket. Although not clearly demonstrated due to a low response rate as well as the authors' choice of which data to present, the unnamed authors of the article consistently reported that the results supported all three hypotheses.

A second, more comprehensive survey of photocopying volume and procedures in libraries was conducted in 1977 by Advanced Technologies/ Libraries with the results being published as a monograph, *Photocopying in*

Libraries: The Librarian Speaks. This survey was distributed to all types of libraries. The survey was constructed to obtain the following information:

(1) Establish characteristics of responding libraries in terms of type of library, number of volumes of serials and monographs, and acquisition budget;

(2) Determine quantity and type of copying technology available;

(3) Identify common photocopying practices which included: what materials account for the largest volume of copying on staff and patron use photocopiers, how ILL requests were filled, charges for photocopiers, specific data on library photocopying, and attitudes toward photocopying.

The findings revealed that photocopying machines were readily available for staff and patron use. Copying of internal documents constituted the largest volume of photocopying. Periodicals were the most heavily copied type of materials. Finally, a majority of libraries do charge for copies. Although this study basically demonstrates that photocopying is used by all types of libraries as a means of distributing information, it provides more extensive data on the volume of photocopying by special libraries than the previously mentioned study by SLA.

Two of the most comprehensive surveys on library photocopying were conducted by King Research and were sponsored by governmental agencies. The first was *Library Photocopying in the United States* (1977) which was sponsored by the National Commission on Libraries and Information Science (NCLIS), the National Science Foundation (NSF), and CONTU, the National Commission on the New Technological Uses of Copyrighted Works. This study attempted to determine the usage of paper-to-paper photocopying machines in libraries in the United States in order to investigate the "feasibility of copyright royalty payment mechanisms." The authors concluded that eligible photocopying is concentrated among a few libraries; special libraries account for only 23% of total photocopying volume among various types of libraries. Less than half of the photocopy items produced are made from serials. Finally, since many smaller libraries do not control the financial records for the

machines used for library photocopying, some alternative payment mechanism would have to deal with the libraries' parent institution.

The second and most frequently quoted study, *Libraries, Publishers and Photocopying: Final Report of Surveys Conducted for the United States Copyright Office*, was conducted in 1981 for the U.S. Copyright Office of the Library of Congress. Six surveys were conducted. These surveys concentrated on various activities relating to photocopying policies and procedures. Phase one consisted of surveying all types of libraries on their photocopying operations. Phase two consisted of surveying, first, ILL requests and second, library staff-conducted photocopying transactions. The fifth survey examined patrons entering the library and making their own copies. The sixth survey concentrated on publishers. According to the results of the survey, the authors concluded that for-profit libraries were making considerable efforts to comply with the copyright laws.

These studies were conducted in the late 1970's when copyright laws were being revised. The main concern of these studies was to determine the volume of photocopying in libraries. These types of studies have not been replicated or updated. Since publishers have begun to prosecute companies in the for-profit sector for copyright infringement, librarians are beginning to investigate this issue. They need more information and education about copyright laws and the issue of copyright compliance. Since very little research has been done, this issue of copyright compliance needs to be investigated.

Two studies exist which directly address copyright compliance by special libraries. The earliest study was "Copyright Compliance in Health Sciences Libraries: A Status Report Two Years after the Implementation of PL 94-553," This study defines copyright compliance in terms of its effect on library services such as ILL lending and borrowing, photocopying services, reserve collection services and audiovisual services. In terms of photocopying services, this study only questions whether a notice of copyright was placed on all machines, at the place where requests are taken and on request forms. Over 60% of both the special health science libraries and hospital libraries responded "yes" to these various displays of copyright notice. Also of interest is that very few health sciences libraries were registered with the Copyright Clearance Center. This study

found that, "with few exceptions United States health sciences libraries are complying with the specific provisions of the law and that compliance has not significantly affected library services."

In 1991 Nemchek published the study, "Copyright Compliance by Law Firms (17 U.S.C. 108): An Ethical Dilemma for Librarians." Unlike previous studies, this study defines copyright compliance as having a written policy statement outlining the copyright laws, the firm's stand on the issue, and the procedures in place to insure compliance. This survey showed that 48% (39 out of 116) of the firms did not have a written policy regarding copyright compliance. Thirty-five percent (35%) did not have a written policy regarding copyright but "have taken voluntary steps towards compliance." No one reported being registered with the Copyright Clearance Center. Nemchek concludes that the responsibility for copyright compliance in law firms lies in the ethical beliefs of the librarian; "because library photocopying is largely unpoliced, compliance with applicable laws is dictated by individual personal and professional ethics."[6]

This was the first study of this type which actually questioned the existence of a written policy in regards to copyright compliance. Since there is no other literature on this subject more studies need to be conducted. This study needs to be expanded to determine how firms comply with the laws. Information obtained from this study can help special librarians in their attempts to understand the act of copyright compliance, assist them in the formulation of written copyright compliance policies, and provide support for educating firm members about the importance of compliance.

III. Research Objectives

After examining the literature on photocopying volume, which was written during the pending enactment to the new Copyright Act of 1976, I decided that the issue of copyright was not one of the most important issues in the library profession during the 1980's. In addition, although recent lawsuits have increased the discussion about the issue of copyright compliance, this discussion has been confined to the profession's

newsletters and conferences. Very little scholarly research on this topic has been documented in the journals.

After reading Nemchek's study, the only study to truly address this issue, and speaking to several other librarians about this subject, I felt a broader survey of the profession was needed. It seemed from these discussions that everyone wanted to know what everyone else was doing concerning copyright compliance. Based on the experiences at my own job, I thought that other organizations were also randomly photocopying to facilitate the distribution of information and that in the day-to-day rush of today's work environments, copyright compliance was neglected. Thus, I decided that an expansion Nemchek's study would be the next logical progression to add to the body of literature concerning this subject.

Therefore, the purpose of this paper is to demonstrate:

(1) The percentage of law firms that have written copyright compliance policies. Copies of several firms' written policies were obtained. Analysis of these policies is also discussed.

(2) What formal and informal, unofficial methods firms are using to comply with the laws.

Law firms were chosen mainly to be consistent with Nemchek but also because they represent the for-profit sector. For this study a law firm is defined as that partnership entity which exists to practice law for a profit thus excluding academic and governmental organizations. Corporate legal departments were excluded to maintain the homogeneity of the population.

Copyright compliance is the act of complying with the provisions of the Section 17 of the United States Code. For this paper, those firms with a written policy (here defined as a formalized policy that has been documented on paper) are assumed to be in compliance. In other words, if a firm does not make copies of whole or substantial portions of written materials, displays copyright notices signs and /or stamps copies with notice of copyright, and that they register with the CCC and/or pay royalties to publishers, it can be assumed that firm is in full compliance with the copyright laws.

However even if true copyright compliance, as defined above, is not always achieved, some firms have been working toward compliance by following "informal, unofficial methods" which for this paper is defined as the following: routing table of contents pages, buying duplicate subscriptions, and not honoring requests to photocopy. Formal methods of compliance are therefore, posting copyright signs, stamping copies with copyright notice, adhering to CONTU guidelines, and registering with the CCC or paying royalties directly to publishers.

This paper however concentrates on investigating which methods towards compliance are being used and does not attempt to determine or theorize to what extent copyright compliance is achieved.

IV. Survey Methodology

A survey, in the form of a questionnaire, was sent to 278 law firm libraries to determine the extent to which copyright compliance is achieved and what methods are being used to achieve compliance.

A sample of private law firm libraries was taken from the *1992-1993 AALL Directory*. This association represents academic law libraries, governmental law libraries, corporate law libraries as well as law firm libraries. For this study I concentrated on only private law libraries as Nemchek did in her study. The organization of the *AALL Directory* does not provide a separate listing of just law firm libraries. There are three sections to the directory. The first section is a list of members by organization name and complete address. It was organized geographically by state. The second section was an alphabetized list of organization names; only the name, city and state were provided. The third section listed individual members name and complete address and was also organized by geography.

In order to determine the population of law firm libraries, I used the second section of the directory, alphabetized list of organization names. All names, that **did not** have court, law school or company (or were an obvious corporation such as AT&T) in the name, were numbered. Starting with the first page, letter A, I merely went down the list numbering all those organizations that were not governmental, academic or corporate in nature and which were in the United States. As stated earlier, this list

gave city and state as well so I was able to eliminate those organizations outside of the United States. By numbering the names of the law firms I determined a total population of 1010.

A computer generated a list of random numbers. I merely matched the random number to the number of the firm on the list and chose firms in this manner until a sample of 278 names was obtained.

I encountered problems with this method however. Many law firms have several branch libraries each of which have individual memberships. Since the directory is listed alphabetically some of the numbers generated from a table of randomly selected numbers would have caused me to send questionnaires to the same law firms, just different branches.

I hypothesized that a written policy would be firm-wide including all branch location the questionnaire was designed to be answered by the "law firm as a single partnership entity (main office and branches, if applicable.)" Sending a questionnaire to several branch offices of the same firm would, I felt, artificially skew the data to either over or under report the number of firms having a written policy. Thus, the questionnaire was sent to only one firm if several firms with the same name were listed. It was not imperative to determine which firm was the main office as the questionnaire could still be answered by a branch firm.

However, in order to ensure that each firm had an equal chance of being chosen, I felt it was necessary to number each firm. When my table of randomly generated numbers would cause me to chose branches from the same firm, I simply went through the table of numbers until the a different firm could be chosen. I did this consistently until a sample of 278 names was achieved.

The questionnaire used was the same one used in Nemchek's study with a few added questions. This questionnaire was divided into three (3) sections. *Section I -- Methods of Copyright Compliance*, asked respondents to chose the situation which closely describes their firms' situation with respect to copyright compliance. Respondents were also asked to provide a copy of their written policies. If no policy existed, respondents were asked to check off from a given list of possible steps toward compliance. *Section II. -- Demographic Information*, included questions on the number of attorneys and number of volumes in the library as a measure of firm size and asks the respondent to check the highest

degree obtained. *Section. III -- Comments*, asked for any additional information the respondent would like to provide.

A pre-designed survey with some additional enhancements was used to increase the validity of this study. However, I found that respondents checked more than one response which complicated the data analysis. Had I known then, what I know now, I would have made some additional revisions in the survey. Primarily, I would have separated questions one, two, and three (1-3), which measure level of copyright compliance, from question number four (4), which measures various actions taken to achieve compliance. This separation would make the questionnaire easier for the respondent to fill out and at the same time provide more concise data. A sample of both the original survey and a sample revision is included in the appendices.

The survey was was printed on the front and back of one piece of paper and was sent with a self-addressed, postage paid return envelope in order to reduce non-response bias. Returned envelopes were immediately separated from the questionnaires. Due to the sensitivity of this issue of copyright compliance, reducing the risk to the participants was paramount. Confidentiality was assured and the questionnaire was completely anonymous. This fact was also emphasized in the cover letter. Every effort was made to minimize participant risk. Finally, a follow up mailing was not conducted due to time and financial constraints.

V. Data Analysis

Out of 278 questionnaires, 166 were returned, providing a 59% response rate. All 166 were usable. In two instances the respondents checked more than one repsonse. In these cases, by reading the comments I was able to determine which response they should have chosen. Of the 166 responses, twenty-two percent (22%) of the firms have written policies regarding copyright law compliance. Fifteen percent (15%) have no written policy and no plans to institute such a policy. In thirty-one percent (32%) of the firms, the issue has come up and a formal policy is being considered and or will probably be formulated in the future. Thirty-one percent (31%) of firms do not have a written policy but are taking

some voluntary but unofficial steps toward compliance. A complete breakdown of the survey responses can be found in Table 1.

Table 1
Breakdown of Response by Statement(s) Chosen

	No. 1	% Total	No. 2	% Total	No. 3	% Total	No. 4	% Total	Total	% Total
Chose Only Response 1-4	10	6.0%	10	6.0%	11	6.6%	0	0	31	18.7%
Also Chose Response 4	27	16.3%	15	9.0%	42	25.3%	51	0	135	81.3%
Total	37	22.3%	25	15.1%	53	31.9%	51	31%	166	100%

One problem with the survey design is that several firms chose more than one response. Respondents consistently chose questions 1, 2, or 3 along with question 4. (A complete breakdown of these reponses are provided in Table 1.) In fact, 135 firms (81%) responded to question 4 which asked them to check all statements that apply to which voluntary and unofficial steps they have taken toward compliance. Due to the high rate of response on this question, I felt it is necessary to examine question 4 separately from the other questions. (See Table 2)

Of the 135 responses, 95% of firms route originals and tables of contents rather than full copies of newsletters, magazines et cetera. Seventy-two percent (72%) buy duplicate subscriptions. Thirty-nine percent (39%) of libraries buy their own subscriptions instead of having photocopies sent from the main office or other branch libraries. Although, 34% of firms post copyright signs at all copy machines, only 16% stamp copies made with the copyright notice stamp. Twenty-one percent (21%) contact and pay royalties to copyright owners when necessary in order to utilize protected materials. Only 17% of libraries adhere to CONTU guidelines in ILL matters and 16% do not honor requests to photocopy materials. Finally and not surprisingly, only 13% of firms are registered with the Copyright Clearance Center.

Table 2
Breakdown of Responses to No. 4

Items Checked	Total Responses to Choices	% That Responded to No. 4 (N=135)
C. Route Originals & Tables of Contents	128	94.8%
D. Buy Duplicate Subscriptions	97	71.9%
I. Branch Buys Own Subscription	53	39.3%
A. Post Copyright Signs	46	34.1%
B. Stamp Copies with Copyright Notice	21	15.6%
G. Contact & Pay Royalties	29	21.5%
H. Adhere to CONTU Guidelines	23	17.0%
E. Do Not Honor Requests to Photocopy	22	16.3%
5. Registered with the CCC	17	12.6%

Demographically, the majority of survey respondents represented average to mid-sized law firms; 90% of respondents came from law firms with 26-400 attorneys. Very small firms (0-25 attorneys) and very large firms (400+) constituted only about seven percent (7%) of the sample. The same spread also occurs in the question concerning the number of volumes. Additional research on this topic may want to focus on these under-represented groups. Finally, 67% of those answering the survey had an MLS. A complete breakdown of these demographics is provided in Table 3.

Table 3
Demographic Breakdown of Respondents

	Response 1	Response 2	Response 3	Response 4	Total	% of Total
No. of Attorneys						
0-25	1	4	0	3	8	4.8%
26-50	6	10	19	14	49	29.5%
51-100	10	4	11	11	36	21.7%
101-200	8	5	12	13	38	22.9%
201-400	9	1	8	9	27	16.3%
400+	2	0	2	1	5	3.0%
No Response	1	1	1	0	3	1.8%
TOTAL	37	25	53	51	166	100.0%

Table 3 - Continued

	Response 1	Response 2	Response 3	Response 4	Total	% of Total
2. Volumes						
under 5,000	2	4	5	1	12	7.2%
5,000-10,000	13	8	12	14	47	28.3%
10,000-20,000	12	7	18	16	53	31.9%
20,000-50,000	6	4	14	18	42	25.3%
50,000+	3	1	3	2	9	5.4%
No Response	1	1	1	0	3	1.8%
TOTAL	37	25	53	51	166	100.0%
3. Education						
BA/BS	5	4	7	5	21	12.7%
MLS	24	13	39	36	112	67.5%
JD only	0	1	0	1	2	1.2%
MLS & JD	4	4	4	5	17	10.2%
Other	3	2	2	4	11	6.6%
No Response	1	1	1	0	3	1.8%
TOTAL	37	25	53	51	166	100.0%

A. Written Policies

This survey also requested that respondents provide a copy of their firm's written policies; nine written statements were received. Although it is difficult to summarize these policies in a few statements, several key aspects predominate.

First, three of the policies were written in the form of a memorandum. The remaining six were in the clear form of a policy indicated by words of "statement of policy" heading the top of the page. Second, five of the policies reference *Title 17* of the *United States Code*. Third, four of the policies stated that any questions should be directed to the librarian; only one policy directed questions to an attorney. Finally, only one policy discussed the illegal duplication of software programs.

The variety of these written policies in regards to tone, formality, coverage and length demonstrate a clear need for a formalized written policy such as the draft *AALL Model Private Firm Copyright Guidelines* published in the September 1993 issue of the *AALL Newsletter*. A copy of

this model is provide in appendix C of this paper. Please note this model is a **DRAFT** copy and may change pending input from association members.

B. Respondents' Comments

Based on the survey results and the respondents' comments, it seems that most law firms are making some effort to increase compliance with the copyright laws. The impetus for this increased compliance as well as education about the subject emanates from the library, not the managing partners or the intellectual property attorneys. Comments and statements in the written policies would also seem to indicate the role of library will be as "copyright compliance police."

Another trend indicated by the comments is the level of firm support. Although in some cases the firms are very supportive of a written policy, the majority of comments in this survey indicated an unwillingness by the attorneys to institute or support such a written policy. However it must be noted, that a lack of or support for a written policy does not indicate non-compliance. In many cases, the library has pro-actively chosen to take steps towards greater compliance; for example, voluntarily reducing the amount of photocopying was mentioned several times.

Many of the comments focused on problems with the Copyright Clearance Center (CCC) and with publishers. The CCC still does not cover many legal publications and many publishers are unwilling to assist libraries in their efforts to comply by providing lower cost second subscriptions. These comments indicated that the issue of publisher and library relations is a neglected yet crucial aspect of this whole issue of copyright compliance and one that needs to be addressed in further research.

Finally, many of the comments have made me rethink my thoughts on importance of written copyright compliance policies. Several firms mentioned having a formal or even an informal yet unwritten policy. Comments indicated an apprehension on the part of the attorneys in the firm to having a documented policy which could be used against them by disgruntled employees. Another firm has a written policy but it is not

followed by members of the firm. Finally, although many comments indicated that a policy was in progress, many comments by librarians indicated an laissez-faire attitude by the members of the firm to institute such policies. One respondent commented that her firm was "a collection of conceited and ego-centric boneheads. They will wait until they are caught."

VII. Conclusion

Survey data indicate two key trends. First, law firms are attempting to increase compliance with the copyright laws whether with a formalized written policy or more informal methods such as routing just the Table of Contents instead of a copy of the entire periodical. Second, the library and the law librarian are at the forefront of the copyright compliance movement in special libraries. The law librarian is the person responsible for educating the members of the firm and monitoring adherence to the policy. Hopefully, this will be viewed as a positive role for the law librarian and not as the more negative role as "copyright police."

More discussion and research is needed about the necessity of and the implications involved with written policies. Drafting a written policy takes additional time and effort, staff members need to be educated, and procedures surrounding the dissemination of information need to be revised. Even with the best written policy, if people either can not nor do not want to follow the policy, compliance may never really be achieved. Support for the policy may be strong at its inception, but the reality is compliance with the laws is not convenient. Compliance creates more paper work and procedures that inhibit an efficient flow of information. As a result, the after initial implementation, actions of compliance may slowly dwindle as people revert to making those quick copies as they pass by the photocopy machine.

Unfortunately, this issue is not going to pass quickly. In fact, it is only the beginning. The next generation of this issue will surround the electronic searching, storage and retrieval of information. However, we must always remember that this issue effects both the library and the publisher. As the amount of information increases ever year, the need for

efficient and cost effective methods of disseminating information is more important than ever. Publishers and libraries need to stop fighting over a few photocopies. Instead they need to meet in the middle and work together to achieve a higher level of information management.

VII. ENDNOTES

1. 17 U.S.C. Sec. 107 (1982).

2. 17 U.S.C. Sec. 108(a) (1982).

3. "Copyright in the Courts Continued...," *Specialist* 16 (Feb. 1993): 1.

4. Anne Melissa Rossheim, " Librarians Side with Publishers in Copyright Case; Oppose Copying Enitre Newsletters, " *Of Counsel* (Sept. 2, 1991): 7.

5. "Survey of Photocopy Procedures in Special Libraries," *Special Libraries* 67 (1976): 271-274.

6. Lee R. Nemchek, "Copyright Compliance by Law Firms (17 U.S.C. Sec. 108): An Ethical Dilemma for Librarians," *Law Library Journal* 83 (Fall 1991): 653.

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XI. APPENDICES

APPENDIX A

Law Firm Copyright Compliance Survey Questionnaire

For purposes of this questionnaire, "Firm" means your law firm as a single partnership entity (main office and branches, if applicable). This definition assumes that if your firm has a copyright compliance policy or is in unofficial ways attempting to foster copyright compliance, all offices and office libraries of your firm would be affected, not just one branch. If this is not the case, please elaborate in the comments section below.

Please check the statement(s) below that most closely describe your firm's current situation with respect to copyright law compliance. *Please read all choices before checking.*

I. Methods of Copyright Compliance:

1._____ The firm currently has a written policy regarding copyright law compliance. [*If possible, please include a copy of the firm's policy. All specific references to the firm's name can be deleted.*]

2._____ The firm does not have a written policy regarding copyright law compliance and no plans have been made to institute such a policy.

3._____ The firm does not have a written policy regarding copyright; however, the issue has come up and a formal policy is being considered and/or will probably be formulated in the future.

4._____ The firm does not have a written policy regarding copyright law compliance; however, we have taken some voluntary but unofficial steps toward compliance; [*check all that apply*]:

A._____ We post copyright notice signs at all copy machines.

B._____ We stamp copies made with copyright notice stamp.

C._____ We route originals and tables of contents rather that full copies of newsletters, magazines, etc.

D._____ We buy duplicate subscriptions instead of photocopying copyrighted materials

E._____ Our library does not honor requests to photocopy materials.

F._____ We contact and pay royalties to copyright owners when necessary in order to utilize protected materials.

G._____ We adhere to the CONTU guidelines in ILL matters; e.g. we check incoming ILL requests for a notice of copyright compliance; we follow "Rule of 5" governing how many copies can be made from recent periodical issues, etc.

H._____ Our library buys its own subscription instead of having photocopies sent from our main office (or other branch) library.

I._____ Other (Please describe in the Comments Section)

5._____ The firm is registered with, licensed by and/or pays fees to the Copyright Clearance Center.

APPENDIX A

II. Demographic Information:

1. How many attorneys does your firm (including branch offices) have?

_____ **0 - 25**
_____ **26 - 50**
_____ **51 - 100**
_____ **101 - 200**
_____ **201 - 400**
_____ **400 +**

2. How many volumes does your library have?

_____ **Under 5,000**
_____ **5,000 - 10,000**
_____ **10,000 - 20,000**
_____ **20,000 - 50,000**
_____ **50,000 +**

3. What is your level of education?

_____ **B.A. or B.S., only**
_____ **M.L.S**
_____ **J.D., only**
_____ **M.L.S & J.D.**
_____ **Other**

III. Comments:

*This questionnaire is based on the survey in: Nemchek, Lee R. "Copyright Compliance by Law Firms (17 U.S.C. 108): An Ethical Dilemma for Librarians." *Law Library Journal* 83 (Fall 1991): 653-683.

APPENDIX A2

Law Firm Copyright Compliance Survey Questionnaire--Revised

For purposes of this questionnaire, "Firm" means your law firm as a single partnership entity (main office and branches, if applicable). This definition assumes that if your firm has a copyright compliance policy or is in unofficial ways attempting to foster copyright compliance, all offices and office libraries of your firm would be affected, not just one branch. If this is not the case, please elaborate in the comments section below.

Please check the statement(s) below that most closely describe your firm's current situation with respect to copyright law compliance. *Please read all choices before checking.*

I. Level of Copyright Compliance:

1._____ The firm currently has a written policy regarding copyright law compliance. [*If possible, please include a copy of the firm's policy. All specific references to he firm's name can be deleted.*]

2._____ The firm does not have a written policy regarding copyright law compliance and no plans have been made to institute such a policy.

3._____ The firm does not have a written policy regarding copyright; however, the issue has come up and a formal policy is being considered and/or will probably be formulated in the future.

II. Methods of Copyright Compliance:

4._____ The firm does not have a written policy regarding copyright law compliance; however, we have taken some voluntary but unofficial steps toward compliance; [*check all that apply*]:

A._____ We post copyright notice signs at all copy machines.

B._____ We stamp copies made with copyright notice stamp.

C._____ We route originals and tables of contents rather that full copies of newsletters, magazines, etc.

D._____ We buy duplicate subscriptions instead of photocopying copyrighted materials

E._____ Our library does not honor requests to photocopy materials.

F._____ We contact and pay royalties to copyright owners when necessary in order to utilize protected materials.

G._____ We adhere to the CONTU guidelines in ILL matters; e.g. we check incoming ILL requests for a notice of copyright compliance; we follow "Rule of 5" governing how many copies can be made from recent periodical issues, etc.

H._____ Our library buys its own subscription instead of having photocopies sent from our main office (or other branch) library.

I._____ The firm is registered with, licensed by and/or pays fees to the Copyright Clearance Center.

J._____ Other (Please describe in the Comments Section)

APPENDIX A2

III. Demographic Information:

1. How many attorneys does your firm (including branch offices) have?

_____ 0 - 25
_____ 26 - 50
_____ 51 - 100
_____ 101 - 200
_____ 201 - 400
_____ 400 +

2. How many volumes does your library have?

_____ Under 5,000
_____ 5,000 - 10,000
_____ 10,000 - 20,000
_____ 20,000 - 50,000
_____ 50,000 +

3. What is your level of education?

_____ B.A. or B.S., only
_____ M.L.S
_____ J.D., only
_____ M.L.S & J.D.
_____ Other

III. Comments:

*This questionnaire is based on the survey in: Nemchek, Lee R. "Copyright Compliance by Law Firms (17 U.S.C. 108): An Ethical Dilemma for Librarians." *Law Library Journal* 83 (Fall 1991): 653-683.

APPENDIX B

Re: Copyright Compliance by Law Firm Libraries

August 1, 1993

Dear Law Library Professional:

I am a graduate student in the School of Library and Information Science at Kent State University. As part of the requirements for my master's degree, I am conducting a study about the status of copyright compliance by law firm libraries. The enclosed questionnaire elicits information that will help me to discern which methods of compliance are being utilized by law firm libraries. This information would be useful to both theorists and practitioners in the field of library and information science.

Confidentiality and anonymity are guaranteed as you do not need to sign your name to individual questionnaires; only the investigator will have access to the survey data. There is no penalty of any kind if you should choose to withdraw from participation at any time. While your cooperation is essential to the success of this study, it is, of course, voluntary. A copy of the results of the study will be available upon request.

If you have further questions, please contact me at (614) 488-5908 or Dr. Carl Franklin, my research advisor, at (614) 292-7746. If you have any further questions regarding research at Kent State University, you may contact Dr. Eugene Wenninger, Office of Research and Sponsored Programs, at (216) 672-2070.

Thank you very much for your cooperation; it is much appreciated. Please return the questionnaire in the enclosed self-addressed stamped envelope to me at the following address by August 31, 1993:

Alicia Kehrig
1314 Presidential Dr. Apt. 205
Columbus, OH 43212

Sincerely,

Alicia Kehrig
Graduate Student

Enclosures

REPRINTED WITH PERMISSION

DRAFT *AALL Model Private Firm Copyright Guidelines*

INTRODUCTORY STATEMENT: Reproducing copyrighted materials is governed by the Copyright Act of 1976, 17 United States Code.

FIRM STATEMENT: *FIRM* does not condone the unauthorized reproduction of copyrighted materials, in any format.

RESPONSIBILITY STATEMENT: Compliance with the Copyright Act is the individual responsibility of every employee, including partners, associates, paralegals and staff members.

PHOTOCOPIER SIGNAGE/PUBLIC NOTICE: Copyright signs are posted at all photocopiers in the firm, as follows: "THE MAKING OF A COPY MAY BE SUBJECT TO THE UNITED STATES COPYRIGHT LAW (Title 17 United States Code)." In addition, the following notice will be stamped on or affixed to the first page of every item photocopied by the library, as follows: "THIS MATERIAL IS SUBJECT TO THE UNITED STATES COPYRIGHT LAW; FURTHER REPRODUCTION IN VIOLATION OF THAT LAW IS PROHIBITED." And finally, the Library displays notice/warning signs where photocopy orders are placed and on the actual photocopy request form. (See Notes for wording.)

Observe and comply with these signs and notices.

ROUTING AND LIBRARY PHOTOCOPY STATEMENT:

It is library practice to route originals and/or tables of contents. Additional original copies of a publication may be purchased when the length of routing lists becomes impractical.

The library will not, nor should individuals, make multiple copies of articles or cover-to-cover copies of newsletters, periodical issues or volumes. This practice should be observed for both standard library materials and materials obtained from online services as well. NOTE: Special attention should be given to "fair use" regarding newsletters.

The library will make one copy of an article in response to a specific request from an employee for individual scholarship, research or educational use. The recipient of the article should not make or distribute additional copies of the article without permission.

ILL STATEMENT: The library typically will borrow or lend original copies of copyrighted materials. In response to requests from other libraries, the library will make one copy of an article so long as the requestor attests, and the library reasonably believes, that the request complies with the Copyright Act or the CONTU guidelines. In requesting materials from other libraries, this library may request a single copy of an article or brief excerpts from a book, so long as the request is in compliance with the Copyright Act or the CONTU guidelines. [CONTU suggests that a library subscribe to a journal title if it requests photocopies of articles published in the periodical within five years prior to the date of the request more than five times within a given year.]

QUESTIONS/FOR MORE INFORMATION: Please direct any copyright concerns to **[LIBRARIAN AND/OR INTELLECTUAL PROPERTY ATTORNEY]**.

PERMISSIONS STATEMENT/COPYRIGHT CLEARANCE CENTER: The library will seek permission to reproduce material that goes beyond these guidelines and, when necessary, will pay royalties for copies made when such copying is beyond that permitted under the Copyright Act. Royalties may be made directly to the copyright owner or other alternative mechanisms such as the Copyright Clearance Center.

NOTES

1. **REVIEW AND IMPLEMENTATION**: A comprehensive review of copyright law as well as firmwide duplication and copyright-related activities should be completed before implementation of a firmwide policy. At a minimum level, this should include a review of *Circular 21: Reproduction of Copyrighted Works by Educators and Librarians*, the Heller/Wiant *Copyright Handbook*, an understanding of all firmwide online database contracts, and a general review of seminal cases of note, such as:

Sony Corporation of America v. Universal City Studios Inc 464 U.S. 417, 104 S.Ct. 777

Washington Bureau Information Inc. v. Collier, Shannon & Scott, CA 91-0305-A (U.S.D.C. Virginia, 2/26/91)

Basic Books, Inc. v. Kinko's Graphics Corp. 758 F.Supp. 1522

Pasha Publications v. Enmark Gas Corp. (1992 WL 70786, N.D. TEX, 22 U.S.P.Q.2d 1076)

American Geophysical Union v. Texaco Inc. (1992 U.S. Dist. Lexis 10540, 23 U.S.P.Q.2d 1561)

2. **SIGN-OFF**: Review and approval of a policy should be at the highest levels of firm legal and staff management. The policy or guidelines should be disseminated to all attorneys, paralegals, and staff.

3. **LEGAL/STAFF RESPONSIBILITIES**: Final resolution of copyright-related issues requires discussion, analysis and agreement. While firm librarians serve as knowledgeable conduits for firmwide copyright issues, their role in this issue may vary from firm to firm. A statement of policy or guidelines is an essentially legal issue or document and requires significant input from various segments of the firm.

4. **SIGNAGE**: Failure to place standard notice of copyright signage at every unsupervised copier in the firm may result in the Library forfeiting its rights under section 108 of the Copyright Act. Wording and practice varies somewhat on this issue. One alternative is:

NOTICE

THE COPYRIGHT LAW OF THE UNITED STATES (TITLE 17 U.S. CODE) GOVERNS THE MAKING OF PHOTOCOPIES OR OTHER REPRODUCTIONS OF COPYRIGHTED MATERIAL.

THE PERSON USING THIS EQUIPMENT IS LIABLE FOR ANY INFRINGEMENT.

The same also applies for utilization of a standard stamp (or equivalent) for each copyrighted item reproduced by the library and the warning notice displayed where photocopy orders are placed and on photocopy request forms. Wording varies somewhat on stamps. One alternative is: "This material may be protected by copyright law (Title 17 U.S. Code)."

And finally, notice/warning signs are displayed where photocopy orders are accepted and on actual photocopy request forms, as follows:

NOTICE

WARNING CONCERNING COPYRIGHT RESTRICTIONS

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproduction of copyrighted material.

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is not to be "used for any purpose other than private study, scholarship or research." If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement.

This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.

5. **ROUTING AND LIBRARY PHOTOCOPYING STATEMENT**: Each firm must come to terms with how it understands "fair use" and how that is borne out in actual practice. This "Statement" discusses what that understanding is.

6. **ILL STATEMENT**: While a specific scenario has been suggested for ILL, each firm must determine a specific approach based on an understanding of internal needs and inter-firm relationships and agreements, as well as the CONTU guidelines (see *Copyright Handbook*). This "Statement" describes what that understanding is.

BEST COPY AVAILABLE